

Christopher Slocum (“Slocum”) appeals a restitution order from Putnam Superior Court. We vacate the order and remand for a hearing on Slocum’s ability to pay restitution.

Facts and Procedural History

On May 4, 2006, Slocum, who had consumed alcohol earlier in the evening, asked fourteen-year-old A.S. to drive him to McPherson’s Market in Coatesville. As A.S. attempted to pull her mother’s 1994 Ford Thunderbird into a parking space at the market, she struck a parked car belonging to Linda Baker, causing damage to both vehicles. Police arrived and arrested Slocum.

On May 8, 2006, the State charged Slocum with Class A misdemeanor contributing to the delinquency of a minor and Class A misdemeanor conversion. Slocum pleaded guilty to both charges. The trial court sentenced Slocum to concurrent one-year sentences with all time suspended to probation. The trial court conducted a restitution hearing on November 22, 2006, and ordered Slocum to pay \$1505 to Linda Baker as a term of probation. Appellant’s App. p. 10. Slocum now appeals.

Discussion and Decision

Slocum argues that the trial court abused its discretion when it ordered him to pay restitution for damages not specifically allowed under Indiana Code section 35-50-5-3 (2004 & Supp. 2006). However, that statute governs restitution ordered as part of an executed sentence. Slocum was ordered to pay restitution as a term of his probation; therefore, the relevant statute is Indiana Code section 35-38-2-2.3, which provides that, as a condition of probation, the court may require a person to

[m]ake restitution or reparation to the victim of the crime for damage or injury that was sustained by the victim. When restitution or reparation is a condition of probation, the court shall fix the amount, which may not exceed an amount the person can or will be able to pay, and shall fix the manner of performance.

Ind. Code § 35-38-2-2.3(a)(5) (2004 & Supp. 2006).

As a general rule, when restitution is ordered as a condition of probation, the trial court must inquire into the defendant's ability to pay in order to prevent indigent defendants from being imprisoned because of their inability to pay. Ladd v. State, 710 N.E.2d 188, 192 (Ind. Ct. App. 1999). See also Bearden v. Georgia, 461 U.S. 660, 665 (1983) (due process and fundamental fairness concerns converge with equal protection principles in Court's analysis of cases involving financial obligations imposed on criminal defendants as conditions of probation). In order to impose restitution as a condition of probation, the trial court must consider the defendant's ability to pay, including factors such as the defendant's financial information, health, and employment history. Champlain v. State, 717 N.E.2d 567, 570 (Ind. 1999). The State acknowledges that the trial court failed to conduct such an inquiry here. Therefore, we vacate the trial court's restitution order and remand for a new restitution order contingent upon the court's inquiry into Slocum's ability to pay.

Remanded for proceedings consistent with this opinion.

DARDEN, J., and KIRSCH, J., concur.